

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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ADVANCE MAGAZINE PUBLISHERS :
INC. d/b/a THE CONDÉ NAST :
PUBLICATIONS, :
Plaintiff, : CIVIL ACTION NO.:
v. : 1:05-cv-07516-(KMK)(DFE)
ACTIV8NOW, LLC and ACTIVE8MEDIA, :
LLC :
Defendants, :
Counterclaimants, :
v. :
ADVANCE PUBLICATIONS, INC. :
and RICHFX, INC., :
Third Party Defendants. :
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THE PARTIES' JOINT CLAIM CONSTRUCTION STATEMENT

Pursuant to the Addendum to the Case Management Plan and Scheduling Order entered March 29, 2006, the parties herewith submit the following Joint Claim Construction Statement ("Joint Statement").

I. DEFINITIONS AND ABBREVIATIONS USED HEREIN.

The following definitions and abbreviations are used in this Joint Statement:

Term	Definition/Abbreviation
Activ8Now, LLC and Active8Media, LLC	Activ8
Advance Publications, Inc., Advance Magazine Publishers Inc. d/b/a The Condé Nast Publications	Advance
RichFX, Inc.	RichFX
U.S. Patent No. 6,535,889	'889 patent
U.S. Patent No. 6,557,006	'006 patent
'889 and '006 patents	patents-in-suit

II. INTRODUCTION.

Activ8 asserts, *inter alia*, that it is the owner, by assignment, of the patents-in-suit and that products and/or services made, sold, used or offered for sale by Advance and RichFX infringe certain claims of the patents-in-suit. Advance and RichFX deny infringement and assert that many, if not all, of the claims of the patents-in-suit are invalid, and seek declaratory judgments for non-infringement and invalidity.

III. THE CONSTRUCTION OF CLAIM TERMS, PHRASES AND CLAUSES ON WHICH THE PARTIES AGREE.

The parties have been able to agree on the construction of five (5) terms:

- (i) "Static Media Object" (with respect to the '006 patent only), (ii) "Physical Static Media Object", (iii) "Demographic Information", (iv) "Manufacturer", and (v) "Object(s)."

The parties' proposed construction of each of the above terms is:

	<u>Claim Term</u>	<u>Proposed Construction</u>
1.	Static Media Object ('006 patent only)	A static publication or object such as a page in a magazine or a newspaper, that cannot by itself provide access to related electronic information.
2.	Physical Static Media Object	A static publication or object such as a page in a magazine or a newspaper, that cannot by itself provide access to related electronic information.
3.	Demographic Information	Information relating to a user, such as user browsing, user purchasing, or other use habits, including the number of visits, product information requests, or other information relating to selection of the Multimedia Object.
4.	Manufacturer	The supplier of a product.
5	Object(s)	Graphic or text portions of the Image or multimedia file(s) associated with the Image.

IV. THE CLAIM TERMS THAT REQUIRE CONSTRUCTION.

The following are the terms in the patents-in-suit that the parties submit require construction, along with the parties' proposed constructions and support:

	Claim Term	‘006 Patent	‘889 Patent	Activ8’s Proposed Construction	Activ8’s Citations	RichFX’s and Advance’s Proposed Construction	RichFX’s and Advance’s Citations
1.	Conventional Static Media Object		1, 2	An electronic publication or electronic visual material, such as a web page or digital image.	‘889: col. 7, lns. 61-col. 8, lns. 16	Same as “Physical Static Media Object” (see above)	Response to 6/3/02 Office Action (‘889 patent).
2.	Interactive Electronic Representation	1, 4, 5, 6, 7, 10, 12, 13	1, 2, 3-6, 9, 11, 12	An electronically recreated representation of the Static Media Object transmitted from a www (“World Wide Web”) server.	‘006: col. 2, lns. 20-23; col. 8, lns. 31-52. ‘889: col. 2, lns. 57-63; col. 10, lns. 14-35.	An electronic representation of a Static Media Object absent the Unique Identification Tag that provides electronic access to related additional electronic information.	‘006: 3:15-30; 3:62-4:21; 6:61-63; 8:31-51; 12:12-19; Fig. 3B. ‘889: 4:1-16; 4:59-5:16; 10:14-29; Fig. 3B. 11/4/02 Office Action Response in both ‘006 and ‘889 patents.

	Claim Term	'006 Patent	'889 Patent	Activ8's Proposed Construction	Activ8's Citations	RichFX's and Advance's Proposed Construction	RichFX's and Advance's Citations
3.	Unique Identification Tag	1, 4, 5, 12, 14	1, 2, 3, 4, 11, 13	A reference that corresponds to a Static Media Object.	'006: col. 2, lns. 19-23; col. 2, lns. 47-50; col. 7, lns. 39-60; col. 8, lns. 31-35; col. 9, lns. 17-21. '889: col. 2, lns. 57-63; col. 3, lns. 17-28; col. 9, lns. 15-36; col. 10, lns. 14-18; col. 12, lns. 28-31.	An identifier that is separately added to a single Static Media Object that is associated with a single Interactive Electronic Representation creating a unique 1:1 correspondence between the Static Media Object and the Interactive Electronic Representation.	'006: Fig. 2; Fig. 5; 2:33-41; 2:54-64; 3:4-16; 7:33-44; 9:10-23; 10:15-20. '889: Fig. 2; Fig. 5; 3:4-16; 9:9-21; 12:20-33; 13:43-36. 5/28/02 Office Action Response ('006 patent). <i>See also</i> 5/21/02 Office Action Response ('889 patent) and 11/4/02 Office Action Response in both '006 and '889 patents. 11/15/2002 ('006 patent) Notice of Allowability.

	Claim Term	'006 Patent	'889 Patent	Activ8's Proposed Construction	Activ8's Citations	RichFX's and Advance's Proposed Construction	RichFX's and Advance's Citations
4.	Image	1, 4, 6, 12	1, 3, 11	A visual depiction including Objects shown on the Static Media Object (page).	'006: Fig. 2, ref. 206a, 206b, 208a, and 208b; col. 7, lns. 33-44. '889: Fig. 2, ref. 206a, 206b, 208a, and 208b; col. 9, lns. 9-20.	The visual representation in the Static Media Object distinct from the Unique Identification Tag.	<i>See</i> definition of Unique Identification Tag herein. '006: Fig. 3B. '889: Fig. 3B.
5.	Multimedia Object	1, 2, 3	1	An object from a media database "hot-linked" to an Interactive Electronic Representation that may be transmitted to a computer.	'006: col. 9, lns. 16-36. '889: col. 9, lns. 16-36.	Sound clips or movie files associated with a Static Media Object.	'006: 8:46-50; 11:40-43. '889: 10:29-33; 14:67-15:4.
6.	User Identification Code	1	1	A code or other information that identifies a computer user that accesses the Interactive Electronic Representation on a www server.	'006: col. 3, lns. 10-14; col. 8, lns. 16-20; col. 9, ln. 58-col. 10, ln. 5. '889: col. 3, lns. 63-67; col. 10, lns. 3-7; col. 13, lns. 2-16.	A code input by a user that identifies the user accessing the Interactive Electronic Representation.	'006: 3:10-14; 8:16-20; 9:51-10:5; 10:21-24; 10:31-42; 11:1-12. '889: 3:63-67; 10:3-7; 12:62-13:16; 13:55-62; 14:30-40.

	Claim Term	'006 Patent	'889 Patent	Activ8's Proposed Construction	Activ8's Citations	RichFX's and Advance's Proposed Construction	RichFX's and Advance's Citations
7.	the unique identification tag appearing on the static media object along with the image having the at least two objects	1, 4, 12	3, 11	Means that the Unique Identification Tag appears on the Physical Static Media Object along with the Image and both the Unique Identification Tag and the Image are visible together on the Physical Static Media Object.	'006: col. 2 Ins. 48-50; FIG. 2; col. 7, Ins. 33-44 '889: col. 3, Ins. 17-21; FIG. 2; col. 9, Ins. 9-20	Means that the Unique Identification Tag is separate from and is an external, visible addition to an otherwise complete, uniquely-associated, single Static Media Object.	<i>See definition of Unique Identification Tag herein.</i>
8.	the unique identification tag appearing on the conventional static media object along with the image having the at least two objects		1	Means that the Unique Identification Tag appears on the Conventional Static Media Object along with the Image and both the Unique Identification Tag and the Image are visible together on the Conventional Static Media Object.	'889: col. 3, Ins. 17-28; FIG. 2; FIG. 3c; col. 9, Ins. 9-20; col. 10, Ins. 50-64	Means that the Unique Identification Tag is separate from and is an external, visible addition to an otherwise complete, uniquely-associated, single Static Media Object.	<i>See definition of Unique Identification Tag herein.</i>

	Claim Term	'006 Patent	'889 Patent	Activ8's Proposed Construction	Activ8's Citations	RichFX's and Advance's Proposed Construction	RichFX's and Advance's Citations
9.	receiving the unique identification tag	1, 4, 12	1, 3, 11	Receiving the Unique Identification Tag by a www server.	<p>'006: Figs. 1 and 4, ref. 142; col. 2, lns. 56-59; col. 6, lns. 37-40; col. 9, lns. 10-16; col. 10, lns. 50-52.</p> <p>'889: Figs. 1 and 4, ref. 142; col. 3, lns. 39-42; col. 7, lns. 32-35; col. 12, lns. 20-26; col. 14, lns. 11-13.</p>	<p>The actual Unique Identification Tag is transmitted as it appears added to the Static Media Object.</p>	<p><i>See definition of Interactive Electronic Representation herein.</i></p> <p>'006: Abstract; Fig. 3A; 10:43-55.</p> <p>'889: Abstract; Fig. 3A; 13:32-54.</p>

	Claim Term	'006 Patent	'889 Patent	Activ8's Proposed Construction	Activ8's Citations	RichFX's and Advance's Proposed Construction	RichFX's and Advance's Citations
10.	receiving the unique identification tag and a user identification code	1	1	Receiving the User Identification Code by a www server.	'006: Figs. 1 and 4, ref. 142; col. 2, lns. 56-59; col. 6, lns. 37-40; col. 9, lns. 10-16; col. 10, lns. 50-52. '889: Figs. 1 and 4, ref. 142; col. 3, lns. 39-42; col. 7, lns. 32-35; col. 12, lns. 20-26; col. 14, lns. 11-13.	Receiving the Unique Identification Tag and a User Identification Code (please refer to RichFX's and Advance's proposed constructions for the terms "Unique Identification Tag" and "User Identification Code") above.	

	Claim Term	'006 Patent	'889 Patent	Activ8's Proposed Construction	Activ8's Citations	RichFX's and Advance's Proposed Construction	RichFX's and Advance's Citations
11.	creating an association between the unique identification tag and an interactive electronic representation of the static media object comprising at least one multimedia object	1, 12	1, 11	Means that the Unique Identification Tag is associated with or linked to the Interactive Electronic Representation on a www server so that the Unique Identification Tag can retrieve the Interactive Electronic Representation from the www server.	'006: col. 2, Ins. 24-27, 32-41; col. 8, Ins. 31-35. '889: col. 2, Ins. 63-66; col. 3, Ins. 4-12; col. 10, Ins. 14-18.	Means a unique 1:1 relationship is made between a single Unique Identification Tag and a single Interactive Electronic Representation.	See definition of Interactive Electronic Representation herein.
12.	providing an/ displaying an/ forwarding the interactive electronic representation of the static media object in response to receiving the unique identification tag	1, 4, 12	1, 3, 11	Means the www server transmits the Interactive Electronic Representation to a www browser of a user.	'006: Figs. 1 and 4, ref. 142; col. 2, Ins. 56-59; col. 6, Ins. 37-40; col. 9, Ins. 10-16; col. 10, Ins. 50-52. '889: Figs. 1 and 4, ref. 142; col. 3, Ins. 39-42; col. 7, Ins. 32-35; col. 12, Ins. 20-26; col. 14, Ins. 11-13.	The Interactive Electronic Representation is displayed as a direct result of the submission of a Unique Identification Tag without any intervening step(s) or activity.	See definition of Interactive Electronic Representation herein. '006: Abstract, Fig. 3A; Fig. 5; 10:43-55. '889: Abstract, Fig. 3A; Fig. 5; 14:4-13.

	Claim Term	'006 Patent	'889 Patent	Activ8's Proposed Construction	Activ8's Citations	RichFX's and Advance's Proposed Construction	RichFX's and Advance's Citations
13.	in response to the selection of the multimedia object, associating demographic information with the user identification code	1, 2, 3	1	Means that the selection of the Multimedia Object by the user allows the www server to capture user Demographic Information without further input from the user.	'006: Fig. 4, ref. 406; col. 8, lns. 62-65; col. 9, ln. 60- col. 10, ln. 1. '889: Fig. 4, ref. 406; col. 10, lns. 46- 49; col. 13, lns. 2-12; col. 3, lns. 63-65.	Means that the selection of the Multimedia Object by the user allows the capture of Demographic Information without further input from the user.	'006: Fig. 4, ref. 406; 8:62-65; 9:60-10:1. '889: Fig. 4, ref. 406; 10:46-49; 13:2-12; 3:63- 65.
14.	receiving control input selecting one of the multimedia objects	1, 7, 13	1, 6, 12	Means the user selects a Multimedia Object.	'006: Fig. 5, ref. 532; col. 10, lns. 52- 53. '889: Fig. 5, ref. 532; col. 14, lns. 13- 14.	No construction required beyond RichFX's and Advance's proposed definition of "Multimedia Objects" above.	
15.	identifying the physical static media object with a unique identification tag		3, 11	Means the unique identification tag is a reference to the Physical Static Media Object.	'889: col. 9, lns. 9- 20; col. 12, lns. 7-11.	The Unique Identification Tag is added to an otherwise complete Physical Static Media Object.	<i>See definition of Unique Identification Tag herein.</i>

	Claim Term	'006 Patent	'889 Patent	Activ8's Proposed Construction	Activ8's Citations	RichFX's and Advance's Proposed Construction	RichFX's and Advance's Citations
16.	associating the physical static media object with a unique identification tag	4		Means creating a relationship between the Unique Identification Tag and the Static Media Object.	'006: col. 7, Ins. 33- 44.	The Unique Identification Tag separately added to an otherwise complete Physical Static Media Object is uniquely correlated with the Physical Static Media Object.	<i>See definition of Unique Identification Tag herein.</i> '006: Fig. 2; 3:4-28; 3:44-45; 7:33-44. '889: Fig. 2; 3:4-28; 4:29-30; 9:9-19.
17.	associating the interactive electronic representation of the physical static media object with the unique identification tag	5	4	Means that the Unique Identification Tag is associated with or linked to the Interactive Electronic Representation on a www server so that the Unique Identification Tag can retrieve the Interactive Electronic Representation from the www server.	'006: col. 2, Ins. 24-27, 32-41; col. 8, Ins. 31-35. '889: col. 2, Ins. 63-66; col. 3, Ins. 4-12; col. 10, Ins. 14-18.	A unique 1:1 correlation is created between the Unique Identification Tag and a single Interactive Electronic Representation.	<i>See definition of Interactive Electronic Representation herein.</i>

	Claim Term	'006 Patent	'889 Patent	Activ8's Proposed Construction	Activ8's Citations	RichFX's and Advance's Proposed Construction	RichFX's and Advance's Citations
18.	retrieving the interactive electronic representation of the static media object based upon the unique identification tag	5	4	Means a www server retrieves the Interactive Electronic Representation based on the Unique Identification Tag.	'006: Figs. 1 and 4, ref. 142; col. 2, lns. 56-59; col. 6, lns. 37-40; col. 9, lns. 10-16; col. 10, lns. 50-52. '889: Figs. 1 and 4, ref. 142; col. 3, lns. 39-42; col. 7, lns. 32-35; col. 12, lns. 20-26; col. 14, lns. 11-13.	The Interactive Electronic Representation is retrieved in direct response to the submission of a Unique Identification Tag without any intervening step(s) or activity.	<i>See definition of providing an/ displaying an/ forwarding the interactive electronic representation of the static media object in response to receiving the unique identification tag herein.</i>
19.	imprinting a physical static media object with a unique identification tag	12		The Unique Identification Tag is rendered or printed on the Physical Static Media Object.	'006: col. 7, lns. 33-34	The Unique Identification Tag is added to an otherwise complete Physical Static Media Object.	'006: 7:33-44; 10:12-15. '889: 9:9-19; 13:24-27. <i>See also definition of Unique Identification Tag herein.</i>

	Claim Term	'006 Patent	'889 Patent	Activ8's Proposed Construction	Activ8's Citations	RichFX's and Advance's Proposed Construction	RichFX's and Advance's Citations
20.	Static Media Object (‘889 patent only)		2, 4-6, 9, 12	A Physical/Traditional Static Media Object or Conventional Static Media Object.	‘889: col. 2, lns. 37-44; col. 2, lns. 49-54; col. 2, lns. 59-63; col. 7, lns. 61-67; col. 8, lns. 1-7.	A static publication or object such as a page in a magazine, or a newspaper, that cannot by itself provide access to related electronic information.	Response to 6/3/02 Office Action ('889 patent). ‘889: Fig. 2; 7:60-8:17; 8:43-9:8.

Thus, of these twenty-five (25) terms which one or more of the parties believe require construction, the parties have, to date, been able to agree on the constructions of five (5) terms, leaving twenty (20) terms in dispute for the Court to construe.

V. ANTICIPATED LENGTH OF THE MARKMAN HEARING.

The parties have conferred and believe that the *Markman* hearing, if required, should last a day without live testimony.

This 8th day of May, 2006.

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